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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,312	03/12/2004	Roger Morris	30862.CIP	8203
39313 7590 06/27/2008 CARL M. NAPOLITANO, PH.D. ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. 255 SOUTH ORANGE AVE., SUITE 1401 P.O. BOX 3791 ORLANDO, FL 32802-3791				
EXAMINER				
BEISNER, WILLIAM H				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
06/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/799,312

Applicant(s)

MORRIS ET AL.

Examiner

WILLIAM H. BEISNER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31, 52-62, 65 and 67-99 is/are pending in the application.
- 4a) Of the above claim(s) 1-31, 52-56 and 68-99 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57, 58, 61, 62, 65 and 67 is/are allowed.
- 6) ☒ Claim(s) 59 and 60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-31, 52-56 and 68-99 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/2/2007.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification fails to proper antecedent basis for the claimed subject matter of claim 65. While paragraphs [0043] and [0051] provide support for red cabbage, grapes, turmeric and black carrot, they do not provide support for all of the sources of extract in claim 65.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 59 and 60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

While the originally filed disclosure provides support for a sensor device with a pH indicator that comprises a food extract (See original claim 64) **or** is responsive to alkaline gas, e.g. ammonia (See original claim 59 and 60), the originally filed disclosure fails to provide support for a sensor device with pH indicator that comprises a food extract **and** is responsive to alkaline gas, e.g. ammonia (See amended claims 57, 59 and 60). Note the originally filed disclosure only discloses the pH indicator as having alternative properties and then having all of the properties encompassed by claims 59 and 60 (See paragraphs [0051] and [0053] of the originally filed specification). As a result, the specification does not reasonably convey to one of ordinary skill in the art that the invention was in the possession of the invention encompassed by claims 59 and 60 at the time of filing the application.

Allowable Subject Matter

5. Claims 57, 58, 61, 62, 65 and 67 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter:
With respect to claims 57, 58, 61, 62, 65 and 67, the prior art of record fails to teach or fairly suggest mixing the food extract used as a pH indicator with glucose or sucrose so as to reduce the rate of oxidation and breakdown of the indicator extract.

Response to Arguments

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7. With respect to the rejection of Claims 42 and 50 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, this rejection has been withdrawn because claims 42 and 50 have been cancelled.

8. With respect to Claims 57-62 under 35 U.S.C. 102(b) as being anticipated by Miller et al.(US 2002/0044891), this rejection has been withdrawn in view of the incorporation of the limitations of claim 66 into claim 57.

9. With respect to the rejection of Claim 32, 36-39, 43, 44, 46, 57, 61 and 62 under 35 U.S.C. 102(b) as being anticipated by Lampotang et al.(US 4,928,687), this rejection has been withdrawn because claims 32, 36-39, 43, 44, 45 have been cancelled and the limitations of claim 66 have been incorporated in claim 57.

10. With respect to the rejection of Claims 64 and 65 under 35 U.S.C. 103(a) as being unpatentable over Miller et al.(US 2002/0044891) in view of Azar et al.(US 2001/0012636), this rejection has been withdrawn in view of the incorporation of the limitations of claim 66 into claim 57.

11. With respect to the rejection of Claims 32, 33, 36-39, 42 and 47-51 under 35 U.S.C. 103(a) as being unpatentable over Freadman et al.(US 6,589,761) in view of Lampotang et al.

(US 4,928,687), this rejection has been withdrawn because claims 32, 33, 36-39, 42 and 47-51 have been cancelled.

12. With respect to the rejection of Claim 40 under 35 U.S.C. 103(a) as being unpatentable over Freadman et al.(US 6,589,761) in view of Lampotang et al. (US 4,928,687) taken further in view of Shurben (US 4,960,565), this rejection has been withdrawn since claim 40 has been cancelled.

13. With respect to the rejection of Claim 41 under 35 U.S.C. 103(a) as being unpatentable over Freadman et al.(US 6,589,761) in view of Lampotang et al. (US 4,928,687) and Shurben (US 4,960,565) taken further in view of Perlman et al.(US 4,526,752), this rejection has been withdrawn since claim 41 has been cancelled.

14. With respect to the rejection of Claims 43-46 under 35 U.S.C. 103(a) as being unpatentable over Freadman et al.(US 6,589,761) in view of Lampotang et al. (US 4,928,687) taken further in view of Wolfbeis et al.(US 5,407,829), this rejection has been withdrawn since claims 43-46 have been cancelled.

15. With respect to the rejection of Claims 34 and 35 under 35 U.S.C. 103(a) as being unpatentable over Freadman et al.(US 6,589,761) in view of Lampotang et al. (US 4,928,687) taken further in view of Miller et al.(US 2002/0044891), this rejection has been withdrawn since claims 34 and 35 have been cancelled.

16. With respect to the provisional rejection of Claims 32-51 and 57-65 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/659,222 in view of Lampotang et al. (US 4,928,687), this rejection has been withdrawn since application 10/659,222 has been abandoned.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-

1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/
Primary Examiner
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WHB